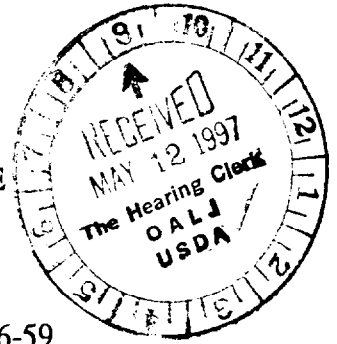


UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE



In re: ) P. & S. Docket No. D-96-59  
)  
Spring Valley Meats, Inc., )  
and Charles Contris, )  
)  
Respondents )

DECISION WITHOUT HEARING  
BY REASON OF DEFAULT WITH RESPECT  
TO RESPONDENT SPRING VALLEY MEATS, INC.

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.), herein referred to as the Act, instituted by a complaint and notice of hearing filed by the Acting Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, charging that the respondents wilfully violated the Act.

Copies of the complaint and notice of hearing and the Rules of Practice (7 C.F.R. § 1.130 et seq.) governing proceedings under the Act were served upon respondent Spring Valley Meats, Inc. by certified mail on October 28, 1996. Respondent Spring Valley Meats, Inc. was informed in a letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the complaint.

Respondent Spring Valley Meats, Inc. has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint pertaining to respondent Spring Valley Meats, Inc., which are admitted by its failure to file an answer, are

adopted and set forth herein as findings of fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. a) Spring Valley Meats, Inc., hereinafter referred to as corporate respondent, is a corporation organized and existing under the laws of North Carolina. Corporate respondent's mailing address is Route 6, Box 216-A, Goldsboro, North Carolina 27530.

b) Corporate respondent at all times material herein was:

(1) Engaged in the business of buying livestock in commerce for purposes of slaughter, or of manufacturing or preparing meats or meat products for sale or shipment in commerce; and

c) A packer within the meaning and subject to the provisions of the Act.

2. a) Charles Contris, hereinafter referred to as individual respondent, is an individual whose mailing address is 16073-056 FPC, Seymour Johnson AFB, Goldsboro, North Carolina 27533.

b) Individual respondent is, and at all times material herein, was:

(1) President of the corporate respondent;

(2) Responsible for direction, management, and control of the corporate respondent; and

(3) A packer within the meaning of and subject to the provisions of the Act.

3. Corporate respondent and individual respondent entered into a consent decision in P&S Docket D-91-75 which was issued August 10, 1992. The decision ordered respondents to cease and desist from issuing checks without having and maintaining sufficient funds on deposit and available in the bank account upon which they are drawn to pay such checks when presented; and failing to pay, when due, the full purchase price of livestock. Respondents were jointly and severally assessed a civil penalty in the amount of Two Thousand Dollars (\$2,000.00).

4. Individual respondent is the alter ego of corporate respondent.

5. a) As set forth more fully in paragraph II of the complaint, corporate respondent's financial condition does not meet the requirements of the Act.

b) As set forth more fully in paragraph III of the complaint, individual respondent, on behalf of corporate respondent, obtained written credit agreements without also obtaining the required written trust waiver acknowledgments from the livestock sellers.

c) Corporate respondent, under the direction, management, and control of individual respondent, on or about the dates and in the transactions set forth in paragraph IV(a) of the complaint, purchased livestock and failed to pay when due the full purchase price of such livestock.

d) As of July 12, 1996, corporate respondent, under the direction, management, and control of individual respondent, failed to pay four sellers of livestock identified in paragraph IV(b) of the complaint a total of \$231,677.00.

#### Conclusions

By reason of the facts found in Finding of Fact 5 herein, respondent Spring Valley

Meats, Inc. violated sections 202(a), and 409 of the Act (7 U.S.C. §§ 204, 192(a), 228b), section 201.200 of the regulations (9 C.F.R. § 201.200), and the Secretary's Order in P&S Docket No. D-91-75.

### Order

Respondent Spring Valley Meats, Inc., its agents and employees, directly or indirectly through any corporate or other device, shall cease and desist from:

1. Failing to pay, when due, the full purchase price of livestock;
2. Failing to pay the full purchase price of livestock;
3. Purchasing livestock while insolvent, that is, while current liabilities exceed current assets, unless respondent pays the full purchase price of the livestock at the time of the purchase in United States currency, by certified check, or by wire transfer as provided in 7 U.S.C. § 204;
4. Initiating or participating in any activity, course of conduct, scheme, arrangement or agreement to purchase or attempt to purchase livestock, either directly or indirectly through its agents, intermediaries, persons or entities, which would endanger or attempt to endanger, the trust interest accorded to each seller of livestock by virtue of 7 U.S.C. § 196; Provided, however, that respondent, its agents or intermediaries who purchase for the respondent, may purchase or attempt to purchase livestock on credit if respondent, its agents or intermediaries who purchase for respondent, fully inform such livestock sellers as required by 9 C.F.R. § 201.200 and expressly agree with livestock sellers, in writing, before such purchase that the method and manner of payment for the purchase

would constitute a credit sale as recognized by 7 U.S.C. § 228b and  
9 C.F.R. § 201.43; and

5. Violating the Secretary's Order in P & S Docket No. D-01-75.

In accordance with section 203(b) of the Act (7 U.S.C. § 193(b)), respondent Spring Valley Meat's Inc. is assessed a civil penalty in the amount of Twenty-eight Thousand Dollars (\$28,000) (for which respondent is jointly and severally liable with individual respondent Charles Contris) for alleged violations through the date of this order.

This decision shall become final and effective without further proceeding 35 days after the date of service upon respondent Spring Valley Meats, Inc., unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145).

Copies hereof shall be served upon the parties.

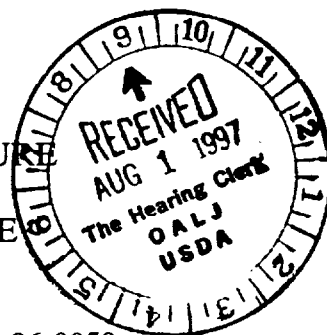
Done at Washington, D.C.

this 12<sup>th</sup> day of May, 1997

Doreen A. Baker  
Administrative Law Judge

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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE



In re: ) P. & S. Docket No. D-96-0059  
)  
)  
Spring Valley Meats, Inc., )  
and Charles Contris, )  
)  
) **Decision and Order**  
Respondents ) **as to Charles Contris**

The Acting Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration [hereinafter Complainant], instituted this disciplinary administrative proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. §§ 181-229) [hereinafter Packers and Stockyards Act]; the regulations promulgated under the Packers and Stockyards Act (9 C.F.R. §§ 201.1-200) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary (7 C.F.R. §§ 1.130-151) [hereinafter Rules of Practice], by filing a Complaint and Notice of Hearing [hereinafter Complaint] on September 27, 1996.

The Complaint alleges that: (1) Respondent Charles Contris is the *alter ego* of Respondent Spring Valley Meats, Inc. (Complaint ¶ V); (2) the financial condition of Respondent Spring Valley Meats, Inc., does not meet the requirements of the Packers and Stockyards Act (7 U.S.C. § 204) (Complaint ¶¶ II, V); (3) Respondent Charles Contris and Respondent Spring Valley Meats, Inc. [hereinafter Respondents], obtained written credit agreements with livestock sellers without also obtaining written trust

waiver acknowledgements from the livestock sellers in violation of section 202(a) of the Packers and Stockyards Act (7 U.S.C. § 192(a)) and section 201.200 of the Regulations (9 C.F.R. § 201.200) (Complaint ¶¶ III, V); and (4) Respondents purchased livestock and failed to pay, when due, the full purchase price of the livestock in willful violation of sections 202(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 192(a), 228b) and the Secretary's Order issued in P. & S. Docket No. D-91-75<sup>1</sup> (Complaint ¶¶ IV, V).

Respondents were served with the Complaint on October 28, 1996, but failed to file an Answer to the Complaint within 20 days after service, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). On May 12, 1997, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Administrative Law Judge Dorothea A. Baker [hereinafter ALJ] issued a Decision Without Hearing By Reason of Default With Respect to Respondent Charles Contris [hereinafter Default Decision as to Charles Contris] in which the ALJ: (1) found that Respondent Charles Contris willfully violated sections 202(a) and 409 of the Packers and Stockyards Act (7 U.S.C. §§ 192(a), 228b), section 201.200 of the Regulations (9 C.F.R. § 201.200), and the Secretary's Order issued in P. & S. Docket No. D-91-75; (2) ordered Respondent Charles Contris to cease and desist violations of the Packers and Stockyards Act, the Regulations, and the Secretary's Order issued in P. & S. Docket No. D-91-75; and (3) assessed Respondent

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<sup>1</sup>The Consent Decision containing the Secretary's Order issued in P. & S. Docket No. D-91-75 is referenced at 51 Agric. Dec. 1404 (1992).

Charles Contris a civil penalty of \$28,000 (Default Decision as to Charles Contris at 3-5).<sup>2</sup>

On June 6, 1997, Respondents appealed to the Judicial Officer to whom the Secretary of Agriculture has delegated authority to act as final deciding officer in the Department's adjudicatory proceedings subject to 5 U.S.C. §§ 556 and 557 (7 C.F.R. § 2.35).<sup>3</sup> On July 10, 1997, Complainant filed Complainant's Response to Respondents' Petition for Appeal, and on July 14, 1997, the case was referred to the Judicial Officer for decision.

Based upon a careful consideration of the record in this proceeding, the Default Decision as to Charles Contris is adopted as the final Decision and Order as to Charles Contris, with additions or changes shown by brackets, deletions shown by dots, and minor editorial changes not specified. Additional conclusions by the Judicial Officer follow the ALJ's conclusions.

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<sup>2</sup>Also, on May 12, 1997, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the ALJ issued a Decision Without Hearing By Reason of Default With Respect to Respondent Spring Valley Meats, Inc. [hereinafter Default Decision as to Spring Valley Meats, Inc.], which is more fully addressed in a companion decision and order, *In re Spring Valley Meats, Inc.* (Decision as to Spring Valley Meats, Inc.), 56 Agric. Dec. \_\_\_\_ (Aug. 1, 1997).

<sup>3</sup>The position of Judicial Officer was established pursuant to the Act of April 4, 1940 (7 U.S.C. §§ 450c-450g); section 4(a) of Reorganization Plan No. 2 of 1953, 18 Fed. Reg. 3219, 3221 (1953), *reprinted in* 5 U.S.C. app. § 4(a) at 1491 (1994); and section 212(a)(1) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. § 6912(a)(1)).



## **APPLICABLE STATUTORY PROVISIONS AND REGULATIONS**

7 U.S.C.:

### **CHAPTER 9—PACKERS AND STOCKYARDS**

. . . .

#### **SUBCHAPTER II-PACKERS GENERALLY**

##### **§ 191. "Packer" defined**

When used in this chapter the term "packer" means any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce.

##### **§ 192. Unlawful practices enumerated**

It shall be unlawful for any packer with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to:

(a) Engage in or use any unfair, unjustly discriminatory, or deceptive practice or device[.]

##### **§ 193. Procedure before Secretary for violations**

###### **(a) Complaint; hearing; intervention**

Whenever the Secretary has reason to believe that any packer has violated or is violating any provision of this subchapter, he shall cause a complaint in writing to be served upon the packer, stating his charges in that respect, and requiring the packer to attend and testify at a hearing at a time and place designated therein, at least thirty days after service of such complaint; and at such time and place there shall be afforded the packer a reasonable opportunity to be informed as to the evidence introduced against him (including the right of cross-examination), and to be heard in person or by counsel and through witnesses, under such regulations as the Secretary may prescribe . . . .

**(b) Report and order; penalty**

If, after such hearing, the Secretary finds that the packer has violated or is violating any provisions of this subchapter covered by the charges, he shall make a report in writing in which he shall state his findings as to the facts, and shall issue and cause to be served on the packer an order requiring such packer to cease and desist from continuing such violation. . . . The Secretary may also assess a civil penalty of not more than \$10,000 for each such violation.

**SUBCHAPTER III—STOCKYARDS AND STOCKYARD DEALERS**

. . . .

**§ 204. Bond and suspension of registrants**

On and after July 12, 1943, the Secretary may require reasonable bonds from every market agency (as defined in this subchapter), every packer (as defined in subchapter II of this chapter) in connection with its livestock purchasing operations (except that those packers whose average annual purchases do not exceed \$500,000 will be exempt from the provisions of this paragraph), and every other person operating as a dealer (as defined in this subchapter) under such rules and regulations as he may prescribe, to secure the performance of their obligations, and whenever, after due notice and hearing, the Secretary finds any registrant is insolvent or has violated any provisions of this chapter he may issue an order suspending such registrant for a reasonable specified period. Such order of suspension shall take effect within not less than five days, unless suspended or modified or set aside by the Secretary or a court of competent jurisdiction. If the Secretary finds any packer is insolvent, he may after notice and hearing issue an order under the provisions of section 193 of this title requiring such packer to cease and desist from purchasing livestock while insolvent, or while insolvent purchasing livestock except under such conditions as the Secretary may prescribe to effectuate the purposes of this chapter.

## SUBCHAPTER V—GENERAL PROVISIONS

....

### **§ 228b. Prompt payment for purchase of livestock**

#### **(a) Full amount of purchase price required; methods of payment**

Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, deliver to the seller or his duly authorized representative the full amount of the purchase price: *Provided*, That each packer, market agency, or dealer purchasing livestock for slaughter shall, before the close of the next business day following purchase of livestock and transfer of possession thereof, actually deliver at the point of transfer of possession to the seller or his duly authorized representative a check or shall wire transfer funds to the seller's account for the full amount of the purchase price; or, in the case of a purchase on a carcass or "grade and yield" basis, the purchaser shall make payment by check at the point of transfer of possession or shall wire transfer funds to the seller's account for the full amount of the purchase price not later than the close of the first business day following determination of the purchase price: *Provided further*, That if the seller or his duly authorized representative is not present to receive payment at the point of transfer of possession, as herein provided, the packer, market agency or dealer shall wire transfer funds or place a check in the United States mail for the full amount of the purchase price, properly addressed to the seller, within the time limits specified in this subsection, such action being deemed compliance with the requirement for prompt payment.

#### **(b) Waiver of prompt payment by written agreement; disclosure requirements**

Notwithstanding the provisions of subsection (a) of this section and subject to such terms and conditions as the Secretary may prescribe, the parties to the purchase and sale of livestock may expressly agree in writing, before such purchase or sale, to effect payment in a manner other than that required in subsection (a) of this section. Any such agreement shall be disclosed in the records of any market agency or dealer selling the livestock, and in the purchaser's records and on the accounts or other documents issued by the purchaser relating to the transaction.

**(c) Delay in payment or attempt to delay deemed unfair practice**

Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered an "unfair practice" in violation of this chapter. Nothing in this section shall be deemed to limit the meaning of the term "unfair practice" as used in this chapter.

7 U.S.C. §§ 191, 192(a), 193(a), (b), 204, 228b.

9 C.F.R.:

**PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT**

....

**§ 201.200 Sale of livestock to a packer on credit.**

(a) No packer whose average annual purchases of livestock exceed \$500,000 shall purchase livestock on credit, and no dealer or market agency acting as an agent for such a packer shall purchase livestock on credit, unless: (1) Before purchasing such livestock the packer obtains from the seller a written acknowledgement as follows:

On this date I am entering into a written agreement for the sale of livestock on credit to \_\_\_\_\_, a packer, and I understand that in doing so I will have no rights under the trust provisions of section 206 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 196, Pub. L. 94-410), with respect to any such credit sale. The written agreement for such selling on credit

Covers a single sale.

Provides that it will remain in effect until (date).

Provides that it will remain in effect until canceled in writing by either party.

(Omit the provisions not applicable.)

Date \_\_\_\_\_

Signature \_\_\_\_\_

(2) Such packer retains such acknowledgement, together with all other documents, if any, setting forth the terms of such credit sales on which the purchaser and seller have agreed, and such dealer or market agency retains a copy thereof, in his records for such time as is required by

any law, or by written notice served on such person by the Administrator, but not less than two calendar years from the date of expiration of the written agreement referred to in such acknowledgement; and

(3) Such seller receives a copy of such acknowledgement.

(b) Purchasing livestock for which payment is to be made by a draft which is not a check, shall constitute purchasing such livestock on credit within the meaning of paragraph (a) of this section. (See also § 201.43(b)(1).)

(c) The provisions of this section shall not be construed to permit any transaction prohibited by § 201.61(a) relating to financing by market agencies selling on a commission basis.

9 C.F.R. § 201.200.

#### **ADMINISTRATIVE LAW JUDGE'S INITIAL DEFAULT DECISION (AS MODIFIED)**

. . . .

#### **Findings of Fact**

1. a) Spring Valley Meats, Inc., . . . is a corporation organized and existing under the laws of North Carolina. The . . . mailing address [for Spring Valley Meats, Inc.] is Route 6, Box 216-A, Goldsboro, North Carolina 27530.

b) [Spring Valley Meats, Inc.,] at all times material herein, was:

(1) Engaged in the business of buying livestock in commerce for purposes of slaughter, or of manufacturing or preparing meats or meat products for sale or shipment in commerce; and

[(2)] A packer within the meaning of and subject to the provisions of the [Packers and Stockyards] Act.

2. a) Charles Contris . . . is an individual whose mailing address is 16073-056 FPC, Seymour Johnson AFB, Goldsboro, North Carolina 27533.

b) [Charles Contris] is, and at all times material herein, was:

- (1) President of [Spring Valley Meats, Inc.];
- (2) Responsible for direction, management, and control of [Spring Valley Meats, Inc.]; and
- (3) A packer within the meaning of and subject to the provisions of the [Packers and Stockyards] Act.

3. [Respondents] entered into a Consent Decision in P. & S. Docket No. D-91-75 which was issued August 10, 1992. The decision ordered Respondents to cease and desist from issuing checks without having and maintaining sufficient funds on deposit and available in the bank account upon which they are drawn to pay such checks when presented; and failing to pay, when due, the full purchase price of livestock. Respondents were jointly and severally assessed a civil penalty . . . of . . . \$2,000.

4. [Charles Contris] is the *alter ego* of [Spring Valley Meats, Inc.]

5. a) As set forth more fully in paragraph II of the Complaint, the financial condition of [Spring Valley Meats, Inc.,] does not meet the requirements of the [Packers and Stockyards] Act.

b) As set forth more fully in paragraph III of the Complaint, [Charles Contris], on behalf of [Spring Valley Meats, Inc.], obtained written credit agreements without also obtaining the required written trust waiver acknowledgments from the livestock sellers.

c) [Spring Valley Meats, Inc.], under the direction, management, and control of [Charles Contris], on or about the dates and in the transactions set forth in

paragraph IV(a) of the Complaint, purchased livestock and failed to pay, when due, the full purchase price of such livestock.

d) As of July 12, 1996, [Spring Valley Meats, Inc.,] under the direction, management, and control of [Charles Contris], failed to pay four sellers of livestock identified in paragraph IV(b) of the Complaint a total of \$231,677.

### **Conclusions [of Law]**

By reason of the facts found in [the] Finding[s] of Fact . . . [in this Decision and Order], Respondent Charles Contris willfully violated sections 202(a) and 409 of the [Packers and Stockyards] Act (7 U.S.C. §§ 192(a), 228b), section 201.200 of the Regulations (9 C.F.R. § 201.200), and the Secretary's Order issued in P. & S. Docket No. D-91-75.

### **ADDITIONAL CONCLUSIONS BY THE JUDICIAL OFFICER**

Respondents contend that no default decision should be issued in this proceeding because Respondents' December 13, 1996, filing is their Answer to the Complaint, or in the alternative, Respondents should be allowed to file a "formal" Answer (Response of Respondents to Motion for Decision Without Hearing at 3). I find no basis in this record for setting aside the Default Decision as to Charles Contris.<sup>4</sup> Instead, the record reveals, as discussed in this Decision and Order, *infra*, pp. 11-31, that the Default Decision as to Charles Contris was issued in accordance with the Rules of Practice.

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<sup>4</sup>I also find no basis for setting aside the Default Decision as to Spring Valley Meats, Inc., which is the subject of a companion decision and order, *In re Spring Valley Meats, Inc.* (Decision as to Spring Valley Meats, Inc.), 56 Agric. Dec. \_\_\_\_ (Aug. 1, 1997).

On September 30, 1996, the Office of the Hearing Clerk sent two identical, dually-addressed letters dated September 30, 1996, and one copy each of the Complaint and the Rules of Practice to Respondent Charles Contris, at his last known address, Route 1, 79M, Warsaw, North Carolina 28398, and to Respondent Spring Valley Meats, Inc., at its last known address, Route 6, Box 216-A, Goldsboro, North Carolina 27530, by certified mail. The envelope containing the September 30, 1996, mailing to Respondent Charles Contris, from the Office of the Hearing Clerk, was returned to the Office of the Hearing Clerk marked by the postal service "Unclaimed." The envelope containing the September 30, 1996, mailing to Respondent Spring Valley Meats, Inc., from the Office of the Hearing Clerk, was returned to the Office of the Hearing Clerk marked by the postal service "Moved Left No Address."

Section 1.147(c)(1) of the Rules of Practice provides:

**§ 1.147 Filing; service; extensions of time; and computation of time.**

. . . .

(c) *Service on party other than the Secretary.* (1) Any complaint or other document initially served on a person to make that person a party respondent in a proceeding, proposed decision and motion for adoption thereof upon failure to file an answer or other admission of all material allegations of fact contained in a complaint, initial decision, final decision, appeal petition filed by the Department, or other document specifically ordered by the Judge to be served by certified or registered mail, shall be deemed to be received by any party to a proceeding, other than the Secretary or agent thereof, on the date of delivery by certified or registered mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, *Provided that*, if any such document or paper is sent by certified or registered mail but is returned marked by the postal service as unclaimed or refused, it shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address.



On October 28, 1996, the Office of the Hearing Clerk served a copy of the Complaint on Respondents at Route 1, 79M, Warsaw, North Carolina 28398, by ordinary mail, in accordance with 7 C.F.R. § 1.147(c)(1) (October 28, 1996, Memorandum to the File from Tribble F. Greaves, Legal Technician).<sup>5</sup> The Memorandum to the File certifying the October 28, 1996, mailing states:

This is to certify that on October 28, 1996, I posted by regular mail an envelope containing a copy of a Complaint, giving respondent 20 days from receipt to file an answer. Respondent will have 20 days from the date of this memorandum to file an answer.

Sections 1.136, 1.139, and 1.141 of the Rules of Practice provide:

**§ 1.136 Answer.**

(a) *Filing and service.* Within 20 days after the service of the complaint . . . , the respondent shall file with the Hearing Clerk an answer signed by the respondent or the attorney of record in the proceeding. . . .

. . . .

(c) *Default.* Failure to file an answer within the time provided under § 1.136(a) shall be deemed, for purposes of the proceeding, an admission of the allegations in the Complaint, and failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation, unless the parties have agreed to a consent decision pursuant to § 1.138 [(7 C.F.R. § 1.138)].

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<sup>5</sup>Respondents admit that they received a copy of the October 28, 1996, Memorandum to the File from Tribble Greaves (Response of Respondents to Motion for Decision Without Hearing ¶ 5), and I infer from this admission that Respondents also received a copy of the Complaint which accompanied the October 28, 1996, Memorandum to the File. Even if I found that Respondents did not actually receive the Complaint in the October 28, 1996, mailing, that finding would not change the outcome of this proceeding because, in accordance with section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)), Respondents are deemed to have received the Complaint on the date that it was remailed by ordinary mail, viz., October 28, 1996.

**§ 1.139 Procedure upon failure to file an answer or admission of facts.**

The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.

**§ 1.141 Procedure for hearing.**

(a) *Request for hearing.* Any party may request a hearing on the facts by including such request in the complaint or answer, or by a separate request, in writing, filed with the Hearing Clerk within the time in which an answer may be filed. . . . Failure to request a hearing within the time allowed for the filing of the answer shall constitute a waiver of such hearing.

7 C.F.R. §§ 1.136(a), (c), .139, .141(a).

The Complaint served on Respondents on October 28, 1996, clearly informs

Respondents of the consequences of failing to file a timely Answer, as follows:

The respondents shall file an answer with the Hearing Clerk, United States Department of Agriculture, Room 1079 South Building, Washington, D.C. 20250, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to file an answer shall constitute an admission of all the material allegations of this Complaint and Notice of Hearing. Respondents are hereby notified that unless hearing is waived, either expressly or by failure to file an answer and request a hearing as provided in sections 1.136 and 1.141 of the Rules of Practice (7 C.F.R. §§ 1.136, 1.141), a hearing will be held at a place and date to be specified later, before an administrative law judge designated to conduct such hearing.

Complaint at 8-9.

Respondents' Answer was due November 18, 1996. On the day Respondents' Answer was due, Complainant's counsel received a telephone call from Ms. Stacy Fisher, Respondent Charles Contris' daughter (Complainant's Response to Respondents' Petition for Appeal at 3). Complainant describes the telephone conversation as follows:

Ms. Fisher advised that [R]espondents were not ignoring the [C]omplaint, that the [C]omplaint had been misplaced, and that Contris was incarcerated. Ms. Fisher also provided Contris' address at the prison at Seymour Johnson Air Force Base. Complainant's counsel advised Ms. Fisher that [C]omplainant could not grant an extension and that [C]omplainant would not object to an extension if [R]espondents filed such a request with the Administrative Law Judge.

Complainant's Response to Respondents' Petition for Appeal at 3-4.

The record does not reveal that Respondents made any request, on or before November 18, 1996, to the ALJ for an extension of time to file their Answer. On November 19, 1996, the Office of the Hearing Clerk sent a letter to Respondent Charles Contris at Route 1, 79M, Warsaw, North Carolina 28398, informing Respondent Charles Contris that an Answer to the Complaint had not been filed within the allotted time (Letter from Joyce A. Dawson to Mr. Charles Contris dated November 19, 1996).

Complainant's counsel informed the Office of the Hearing Clerk of the address given by Ms. Fisher for Respondent Charles Contris (Complainant's Response to Respondents' Petition for Appeal at 4), and on November 20, 1996, the Office of the Hearing Clerk sent Respondent Charles Contris a copy of the Complaint by certified mail (November 20, 1996, Memorandum to the File from Tribble F. Greaves, Legal Technician). The return receipt card was signed on November 25, 1996 (Return Receipt for Article Number Z 068 838 409).

Prior to receipt of the copy of the Complaint mailed on November 20, 1996, Respondents mailed their first filing in this proceeding, an undated letter filed on November 25, 1996,<sup>6</sup> which states, as follows:

Att. hearing clerk,

I Charles Contris need served or mailed the Complaint that was mailed mistakenly to the wrong address, and opened by Danny Rogers and remailed to the proper address, so he said.

This letter has never been received by me to read, so I can properly reply to it.

We have reported this to Joanne [sic] Waterfield P & S Bedford, Va. [S]he said she has no objections to an extension of time for answering complaint. I ask you to please grant extension and mail my letter to this address.

Sincerely Charles Contris

Spring Valley Meats Co.

Charles Contris  
16073-056 F.P.C.  
Seymour Johnson A.F.B.  
Goldsboro, N.C. 27530

Respondents' undated letter filed November 25, 1996.

On December 13, 1996, Respondents filed a second document to which they attached a copy of the November 20, 1996, Memorandum to the File from Tribble F.

Greaves. Respondents' second filing states:

Att to Joann Waterfield Att. for Complainant and Joyce Dawson hearing clerk U.S - Dept Agr.

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<sup>6</sup>Respondents' undated letter was filed 28 days after Respondents were served with the Complaint and was mailed in an envelope postmarked November 21, 1996, 24 days after Respondents were served with the Complaint.

Your mail sent to me has been going to the wrong address evidently, and I have not been able to respond to it in a timely manner.

To answer a few questions for you and inform you of the latest on Spring Valley Meats and myself, I shall proceed. Spring Valley Meats closed its doors in February of 1995 permanently and has never reopened. It has been harrassed [sic] out of business by U.S.D.A. meat inspectors who had unmercifully beat on us us [sic] for a year. I have not been the Pres [sic] of Co [sic] since March of that year nor have I received any pay checks from the Co., as it was completely broke. I am also financially broke and am in prison for false charges they have put upon me. I have been sentenced to 2½ years in Fed prison for misprision of a felony, I didn't commit. I do not have any money to hire a lawyer or an advisor to help me understand the legal paper work you sent me. I would like to cooperate and resolve these problems, if you can send someone or a lawyer to explain what it means that I am to sign. I also had to rely on government lawyer to represent me on the charges that put me in here. I will leave my correct address in letter also you will have to contact prison to call for me.

P.S. I am unable financially to hire a lawyer to explain or advise me. Please send some one to represent or explain papers so I can help you and myself resolve this matter.

Sincerely  
Charles Contris

16073-056 F.P.C.  
[illegible] A.F.B.

Respondents' December 13, 1996, filing.

On December 16, 1996, the Office of the Hearing Clerk sent Respondents a letter stating:

December 16, 1996

Mr. Charles Contris  
16073-056 FPC  
Seymour Johnson AFB  
Goldsboro, North Carolina 27533

Dear Mr. Contris:

Subject: In re: Spring Valley Meats, Inc. and Charles  
Contris, Respondents  
P&S Docket No. D-96-0059

Your Answer to the complaint has been received and filed in the above-captioned proceeding.

You will be informed of any future action taken in this matter.

Sincerely,

/s/

Joyce A. Dawson  
Hearing Clerk

On April 11, 1997, in accordance with 7 C.F.R. § 1.139, Complainant filed a Motion for Decision Without Hearing As To Respondent Charles Contris and a proposed Decision Without Hearing By Reason of Default With Respect To Respondent Charles Contris, which were served on Respondent Charles Contris by certified mail on April 16, 1997. Complainant's April 11, 1997, filings, with respect to Respondent Charles Contris, were accompanied by a letter from the Office of the Hearing Clerk, which states:

## CERTIFIED RECEIPT REQUESTED

April 11, 1997

Mr. Charles Contris  
16073-056 FPC  
Seymour Johnson AFB  
Goldsboro, North Carolina 27530

Dear Mr. Contris:

Subject: In re: Spring Valley Meats, Inc. and Charles  
Contris, Respondents  
P&S Docket No. D-96-0059

Enclosed is a copy of Complainant's Motion for Decision Without Hearing as to Respondent Charles Contris and the Proposed Decision, which have been filed with this office in the above-captioned proceeding.

In accordance with the applicable Rules of Practice, you will have 20 days from the date of receipt of this letter in which to file with this office an original and three copies of objections to the Motion.

Sincerely,  
/s/  
Fe C. Angeles  
Acting Hearing Clerk

On April 11, 1997, Complainant also filed a Motion for Decision Without Hearing As To Respondent Spring Valley Meats, Inc., and a proposed Decision Without Hearing By Reason of Default With Respect To Respondent Spring Valley Meats, Inc., which were served on Respondent Spring Valley Meats, Inc., on April 17, 1997. Complainant's April 11, 1997, filings, with respect to Respondent Spring Valley Meats, Inc., were accompanied by a letter from the Office of the Hearing Clerk, which states:

**CERTIFIED RECEIPT REQUESTED**

April 11, 1997

Mr. Charles Contris  
Spring Valley Meats, Inc.  
16073-056 FPC  
Seymour Johnson AFB  
Goldsboro, North Carolina 27530

Dear Mr. Contris:

Subject: In re: Spring Valley Meats, Inc. and Charles  
Contris, Respondents  
P&S Docket No. D-96-0059

Enclosed is a copy of Complainant's Motion for Decision Without Hearing as to Respondent Spring Valley Meats, Inc. and the Proposed Decision, which have been filed with this office in the above-captioned proceeding.

In accordance with the applicable Rules of Practice, you will have 20 days from the date of receipt of this letter in which to file with this office an original and three copies of objections to the Motion.

Sincerely,  
/s/  
Fe C. Angeles  
Acting Hearing Clerk

Neither Respondent Charles Contris nor Respondent Spring Valley Meats, Inc., filed objections to Complainant's Motion for Decision Without Hearing As To Respondent Charles Contris or Complainant's Motion for Decision Without Hearing As To Respondent Spring Valley Meats, Inc., within 20 days of service, as provided in section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

On May 8, 1997, the Office of the Hearing Clerk sent a letter to Respondents stating:



May 8, 1997

Spring Valley Meats, Inc.  
Mr. Charles Contris  
16073-056 FPC  
Seymour Johnson AFB  
Goldsboro, North Carolina 27530

Gentlemen:

Subject: In re: Spring Valley Meats, Inc. and Charles  
Contris, Respondents  
P&S Docket No. D-96-0059

No objection to the Complainant's Motions for Decision Without Hearing As To Spring Valley Meats, Inc. and Charles Contris, in the above-captioned proceeding, have been filed within the allotted time.

In accordance with the applicable Rules of Practice, the file is being referred to the Administrative Law Judge for further action.

Sincerely,

/s/

Fe C. Angeles  
Acting Hearing Clerk

On May 12, 1997, the ALJ filed a Default Decision as to Respondent Charles Contris and a Default Decision as to Respondent Spring Valley Meats, Inc. On May 12, 1997, the Office of the Hearing Clerk sent a copy of the Default Decision as to Respondent Charles Contris and a copy of the Default Decision as to Respondent Spring Valley Meats, Inc., by certified mail to:

Spring Valley Meats, Inc.  
Mr. Charles Contris  
16073-056 FPC  
Seymour Johnson AFB  
Goldsboro, North Carolina 27530

Each default decision was returned to the Office of the Hearing Clerk marked by the postal service "Refused." On May 21, 1997, the Office of the Hearing Clerk sent a copy of the Default Decision as to Respondent Charles Contris by ordinary mail to:

Mr. Charles Contris  
16073-056 FPC  
Seymour Johnson AFB  
Goldsboro, North Carolina 27530

On May 21, 1997, the Office of the Hearing Clerk also sent a copy of the Default Decision as to Respondent Spring Valley Meats, Inc., by ordinary mail to:

Spring Valley Meats, Inc.  
c/o Mr. Charles Contris  
16073-056 FPC  
Seymour Johnson AFB  
Goldsboro, North Carolina 27530

On June 6, 1997, Respondents filed Response of Respondents to Motion for Decision Without Hearing requesting that the ALJ deny Complainant's Motion for Decision Without Hearing As To Respondent Charles Contris and Complainant's Motion for Decision Without Hearing As To Respondent Spring Valley Meats, Inc., and either "accept the prior December 1996 Response as the Answer of Mr. Contris to the DOA Complaint" or allow "Mr. Contris . . . the opportunity to submit a formal Answer to the Complaint" (Response of Respondents to Motion for Decision Without Hearing at 3). On June 18, 1997, the ALJ ruled as follows:

On May 12, 1997, a Default Decision was issued herein. On June 6, 1997, Respondents filed an untimely Response to Complainant's Motion for Decision Without Hearing, the latter of which was dated April 11, 1997, and which was received at a North Carolina facility for incarceration on April 16, 1997. Respondent Contris maintains that he did not receive said Motion and related data in a timely fashion because he was transferred to a facility in West Virginia.

Respondent Contris, in his response of Respondents to Motion for Decision Without Hearing filed June 6, 1997, requests, among other things, " \* \* \* the opportunity to submit a formal Answer to the Complainant, and requests that this matter be set for hearing after his release from incarceration." The Complainant has filed no response to the June 6, 1997, filing of Respondents.

A consideration of the record as a whole indicates the Default Decision was properly issued and that Respondent Contris' requests should be, and are, denied.

However, a Default Decision is appealable to the Judicial Officer of the Department of Agriculture and he has discretion to set aside or vacate a Default Decision. Accordingly, and exercising an abundance of fairness, it is recommended that Respondent Contris' filing of June 6, 1997, be treated as an Appeal from the Default Decision.

ALJ's June 18, 1997, ruling (entitled Default Decision Issued May 12, 1997).

I agree with the ALJ's denial of Response of Respondents to Motion for Decision Without Hearing. Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) requires that a respondent may file objections to a motion for a default decision within 20 days after service of the motion on the respondent. In the instant proceeding, Respondent Charles Contris was served with Complainant's Motion for Decision Without Hearing As To Respondent Charles Contris and a proposed Decision Without Hearing By Reason of Default With Respect To Respondent Charles Contris on April 16, 1997, and Respondent Spring Valley Meats, Inc., was served with Complainant's Motion for Decision Without Hearing As To Respondent Spring Valley Meats, Inc., and a proposed Decision Without Hearing By Reason of Default With Respect To Respondent Spring Valley Meats, Inc., on April 17, 1997. Respondents' objections to Complainant's motions were filed June 6, 1997, 51 days after Respondent Charles Contris was served with Complainant's Motion for Decision Without Hearing As To Respondent Charles Contris;

25 days after the ALJ filed the Default Decision as to Charles Contris; and 16 days after Respondent Charles Contris was served with the Default Decision as to Charles Contris.

However, Response of Respondents to Motion for Decision Without Hearing was filed after the ALJ issued the Default Decision as to Charles Contris and before the expiration of the time for filing an appeal petition (7 C.F.R. § 1.145(a)). The ALJ recommends in her June 18, 1997, ruling (entitled Default Decision Issued May 12, 1997), that I treat Response of Respondents to Motion for Decision Without Hearing as Respondents' appeal of the Default Decision as to Charles Contris. Under the circumstances in this proceeding, I agree with the ALJ's recommendation.<sup>7</sup>

First, Respondents request that their December 13, 1996, filing be treated as an Answer (Response of Respondents to Motion for Decision Without Hearing at 3).

Section 1.136(b) of the Rules of Practice provides:

**§ 1.136 Answer.**

....

(b) *Contents.* The answer shall:

(1) Clearly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent; or

(2) State that the respondent admits all facts alleged in the complaint; or

(3) State that the respondent admits the jurisdictional allegations of the complaint and neither admits nor denies the remaining allegations and consents to the issuance of an order without further procedure.

7 C.F.R. § 1.136(b).

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<sup>7</sup>For the same reasons, I am also treating Response of Respondents to Motion for Decision Without Hearing as Respondents' appeal of the Default Decision as to Spring Valley Meats, Inc., which is the subject of a companion decision and order, *In re Spring Valley Meats, Inc.* (Decision as to Spring Valley Meats, Inc.), 56 Agric. Dec. \_\_\_\_ (Aug. 1, 1997).

It is well settled that the formalities of court pleadings are not applicable in administrative proceedings,<sup>8</sup> and this principle of administrative law applies to all pleadings, including answers. However, Respondents' December 13, 1996, filing addresses matters extraneous to the Complaint. Specifically, the filing addresses Respondent Charles Contris' financial and employment status, inability to understand "legal paper work," and incarceration for misprision of felony, and the operational status of Respondent Spring Valley Meats, Inc. The December 13, 1996, filing does not: (1) admit, deny, or explain each of the allegations of the Complaint and set forth any defense relevant to the instant proceeding; (2) admit all the facts alleged in the Complaint; or (3) state that Respondents admit the jurisdictional allegations of the Complaint and neither admit nor deny the remaining allegations and consent to the issuance of an order without further procedure. Therefore, I do not find that Respondents' December 13, 1996, filing is an Answer as described in the Rules of Practice; thus, Respondents' December 13, 1996, filing provides no basis for setting aside the Default Decision as to Respondent Charles Contris. Moreover, in accordance with section 1.136(c) of the Rules of Practice, Respondents' failure to respond to the

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<sup>8</sup>*Wallace Corp. v. NLRB*, 323 U.S. 248, 253 (1944); *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 142-44 (1940); *NLRB v. Int'l Bros. of Elec. Workers, Local Union 112*, 827 F.2d 530, 534 (9th Cir. 1987); *Citizens State Bank of Marshfield v. FDIC*, 751 F.2d 209, 213 (8th Cir. 1984); *Consolidated Gas Supply Corp. v. FERC*, 611 F.2d 951, 959 n.7 (4th Cir. 1979); *Aloha Airlines, Inc. v. CAB*, 598 F.2d 250, 262 (D.C. Cir. 1979); *A.E. Staley Mfg. Co. v. FTC*, 135 F.2d 453, 454 (7th Cir. 1943).

allegations of the Complaint is deemed, for the purposes of this proceeding, an admission of the allegations of the Complaint.<sup>9</sup>

Even if I were to find that Respondents' December 13, 1996, filing suffices as an Answer denying the material allegations of the Complaint, I would not set aside the Default Decision as to Charles Contris because it was not timely filed.

The Office of the Hearing Clerk attempted to serve the Complaint on Respondent Charles Contris at his last known address by certified mail on September 30, 1996. The envelope containing the September 30, 1996, mailing to Respondent Charles Contris, from the Office of the Hearing Clerk, was returned to the Office of the Hearing Clerk marked by the postal service as "Unclaimed."

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<sup>9</sup>See *In re Rex Kneeland*, 50 Agric. Dec. 1571, 1572 (1991) (holding that the allegations of the complaint are deemed admitted where respondent's answer, *inter alia*, does not deny the material allegations of the complaint); *In re Joe L. Henson*, 45 Agric. Dec. 2246, 2250 (1986) (holding that the default decision was properly issued where respondent's answer failed to deny the allegations of the complaint); *In re J.W. Guffy*, 45 Agric. Dec. 1742, 1747 (1986) (holding that, where, *inter alia*, respondent's answer does not deny the allegations of the complaint, a default decision is properly issued); *In re Wayne J. Blaser*, 45 Agric. Dec. 1727, 1728 (1986) (holding that respondent's answer which admits one allegation of the complaint and fails to respond to the other allegations of the complaint is an admission of all the allegations in the complaint); *In re Gutman Bros., Ltd.*, 45 Agric. Dec. 956, 960 (1986) (holding that respondent is deemed to have admitted the allegations of the complaint warranting the entry of a default decision where respondent's answer merely requests a hearing); *In re Jonathan Stolfus*, 44 Agric. Dec. 1161, 1162 (1985) (holding that respondent's answer, which states that "no violation was intended," does not deny or otherwise respond to the complaint and pursuant to 7 C.F.R. § 1.136(c) is deemed an admission of the allegations of the complaint); *In re Michael A. Lucas*, 43 Agric. Dec. 1721, 1722, 1725 (1984) (holding that respondent's answer, which raises some concerns that respondent had with policies of the State of Minnesota Livestock Sanitary Board extraneous to the complaint, fails to admit, deny, or otherwise respond to the allegations of the complaint and is deemed an admission of the allegations of the complaint).

On October 28, 1996, the Office of the Hearing Clerk served Respondents with a copy of the Complaint by ordinary mail, in accordance with section 1.147(c)(1) of the Rules of Practice (7 C.F.R. § 1.147(c)(1)). Respondents' Answer was due 20 days after the date on which the Complaint was served by ordinary mail on Respondents, viz., November 18, 1996. The filing that Respondents contend is their Answer was filed December 13, 1996, 46 days after the Complaint was served on Respondents. Therefore, even if I found, as Respondents urge, that their December 13, 1996, filing is Respondents' Answer to the Complaint, I would find that it was not timely filed, that Respondents' failure to file a timely Answer constitutes an admission of the material allegations in the Complaint (7 C.F.R. § 1.136(a), (c)) and a waiver of hearing (7 C.F.R. §§ 1.139, .141(a)), and that the Default Decision as to Charles Contris was properly issued.

Second, Respondents request that, if the December 13, 1996, filing is not accepted as Respondents' Answer to the Complaint, Respondents be given "the opportunity to submit a formal Answer to the Complaint[] and . . . that this matter be set for [h]earing after [Respondent Charles Contris'] release from incarceration." (Response of Respondents to Motion for Decision Without Hearing at 3.)

Although on rare occasions default decisions have been set aside for good cause shown or where Complainant did not object,<sup>10</sup> Respondents have shown no basis for

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<sup>10</sup>See generally *In re Arizona Livestock Auction, Inc.*, 55 Agric Dec. 1121 (1996) (setting aside a default decision because facts alleged in the Complaint and deemed admitted by failure to answer were not sufficient to find a violation of the Packers and Stockyards Act or jurisdiction over the matter by the Secretary of Agriculture); *In re Veg-*  
(continued...)

setting aside the Default Decision as to Charles Contris and allowing Respondents to file an Answer.<sup>11</sup> The Rules of Practice clearly provide that an Answer must be filed within

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<sup>10</sup>(...continued)

*Pro Distributors*, 42 Agric. Dec. 273 (1983) (remand order), *final decision*, 42 Agric. Dec. 1173 (1983) (setting aside a default decision because service of the Complaint by registered and regular mail was returned as undeliverable, and Respondent's license under the Perishable Agricultural Commodities Act had lapsed before service was attempted); *In re J. Fleishman & Co.*, 38 Agric. Dec. 789 (1978) (remand order), *final decision*, 37 Agric. Dec. 1175 (1978); *In re Henry Christ*, L.A.W.A. Docket No. 24 (Nov. 12, 1974) (remand order), *final decision*, 35 Agric. Dec. 195 (1976); *In re Vaughn Gallop*, 40 Agric. Dec. 217 (vacating a default decision and remanding the case to determine whether just cause exists for permitting late Answer), *final decision*, 40 Agric. Dec. 1254 (1981).

<sup>11</sup>*See generally In re John Walker*, 56 Agric. Dec. \_\_\_\_ (Mar. 21, 1997) (holding the default decision proper where respondent's first filing was 126 days after the complaint was served on respondent); *In re Mary Meyers*, 56 Agric. Dec. \_\_\_\_ (Mar. 13, 1997) (holding the default decision proper where respondent's first filing was filed 117 days after respondent's answer was due); *In re Dora Hampton*, 56 Agric. Dec. \_\_\_\_ (Jan. 15, 1997) (holding the default decision proper where respondent's first and only filing in the proceeding was filed 135 days after respondent's answer was due); *In re Gerald Funches*, 56 Agric. Dec. \_\_\_\_ (Jan. 15, 1997) (holding the default decision proper where respondent's first and only filing in the proceeding was filed 94 days after the complaint was served on respondent); *In re City of Orange*, 55 Agric. Dec. 1081 (1996) (holding that the default decision proper where respondent's first and only filing in the proceeding was filed 70 days after respondent's answer was due); *In re Bibi Uddin*, 55 Agric. Dec. 1010 (1996) (holding the default decision proper where response to complaint was filed more than 9 months after service of complaint on respondent); *In re Billy Jacobs, Sr.*, 56 Agric. Dec. \_\_\_\_ (Aug. 15, 1996) (holding the default decision proper where response to complaint was filed more than 9 months after service of complaint on respondent), *appeal docketed*, No. 96-7124 (11th Cir. Nov. 8, 1996); *In re Sandra L. Reid*, 55 Agric. Dec. 996 (1996) (holding the default decision proper where response to complaint was filed 43 days after service of complaint on respondent); *In re Jeremy Byrd*, 55 Agric. Dec. 443 (1996) (holding the default order proper where a timely answer not filed); *In re Moreno Bros.*, 54 Agric. Dec. 1425 (1995) (holding the default order proper where a timely answer was not filed); *In re Ronald DeBruin*, 54 Agric. Dec. 876 (1995) (holding the default order proper where an answer was not filed); *In re James Joseph Hickey, Jr.*, 53 Agric. Dec. 1087 (1994) (holding the default order proper where an answer was not filed); *In re Bruce Thomas*, 53 Agric. Dec. 1569 (1994) (holding the default order proper where an answer was not filed); *In re Ron Morrow*, 53 Agric. Dec. 144 (1994), *aff'd per* (continued...)



<sup>11</sup>(...continued)

*curiam*, 65 F.3d 168 (Table), 1995 WL 523336 (6th Cir. 1995) (holding the default order proper where respondent was given an extension of time until March 22, 1994, to file an answer, but it was not received until March 25, 1994); *In re Donald D. Richards*, 52 Agric. Dec. 1207 (1993) (holding the default order proper where timely answer was not filed); *In re A.P. Holt* (Decision as to A.P. Holt), 50 Agric. Dec. 1612 (1991) (holding the default order proper where respondent was given an extension of time to file an answer, but the answer was not filed until 69 days after the extended date for filing the answer); *In re Mike Robertson*, 47 Agric. Dec. 879 (1988) (holding the default order proper where answer was not filed); *In re Morgantown Produce, Inc.*, 47 Agric. Dec. 453 (1988) (holding the default order proper where an answer was not filed); *In re Johnson-Hallifax, Inc.*, 47 Agric. Dec. 430 (1988) (holding the default order proper where an answer was not filed); *In re Charley Charton*, 46 Agric. Dec. 1082 (1987) (holding the default order proper where an answer was not filed); *In re Les Zedric*, 46 Agric. Dec. 948 (1987) (holding the default order proper where a timely answer not filed); *In re Arturo Bejarano, Jr.*, 46 Agric. Dec. 925 (1987) (holding the default order proper where a timely answer not filed; respondent properly served even though his sister, who signed for the complaint, forgot to give it to him until after the 20-day period had expired); *In re Schmidt & Son, Inc.*, 46 Agric. Dec. 586 (1987) (holding the default order proper where a timely answer was not filed); *In re Roy Carter*, 46 Agric. Dec. 207 (1987) (holding the default order proper where a timely answer was not filed; respondent properly served where complaint sent to his last known address was signed for by someone); *In re Luz G. Pieszko*, 45 Agric. Dec. 2565 (1986) (holding the default order proper where an answer was not filed); *In re Elmo Mayes*, 45 Agric. Dec. 2320 (1986) (holding the default order proper where an answer was not filed), *rev'd on other grounds*, 836 F.2d 550, 1987 WL 27139 (6th Cir. 1987); *In re Leonard McDaniel*, 45 Agric. Dec. 2255 (1986) (holding the default order proper where a timely answer was not filed); *In re Joe L. Henson*, 45 Agric. Dec. 2246 (1986) (holding the default order proper where the answer admits or does not deny material allegations); *In re Northwest Orient Airlines*, 45 Agric. Dec. 2190 (1986) (holding the default order proper where a timely answer was not filed); *In re J.W. Guffy*, 45 Agric. Dec. 1742 (1986) (holding the default order proper where an answer, filed late, does not deny material allegations); *In re Wayne J. Blaser*, 45 Agric. Dec. 1727 (1986) (holding the default order proper where the answer does not deny material allegations); *In re Jerome B. Schwartz*, 45 Agric. Dec. 1473 (1986) (holding the default order proper where a timely answer not filed); *In re Midas Navigation, Ltd.*, 45 Agric. Dec. 1676 (1986) (holding the default order proper where an answer, filed late, does not deny material allegations); *In re Gutman Bros., Ltd.*, 45 Agric. Dec. 956 (1986) (holding the default order proper where the answer does not deny material allegations); *In re Dean Daul*, 45 Agric. Dec. 556 (1986) (holding the default order proper where the answer, filed late, does not deny material allegations); *In re Eastern Air Lines, Inc.*, 44 Agric. Dec. 2192 (1985) (holding the default order proper where a timely answer was not filed; irrelevant  
(continued...))

20 days after service of the Complaint (7 C.F.R. § 1.136(a)). Respondents' December 13, 1996, filing, which they assert is their Answer to the Complaint, was filed 46 days after Respondents were served with the Complaint and 25 days after Respondents' Answer was due. Moreover, even if Respondents' December 13, 1996, filing was timely, it does not respond to the allegations of the Complaint as required in section 1.136(b) of the Rules of Practice (7 C.F.R. § 1.136(b)), and in accordance with section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)), Respondents' failure to

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<sup>11</sup>(...continued)

that respondent's main office did not promptly forward complaint to its attorneys); *In re Carl D. Cuttone*, 44 Agric. Dec. 1573 (1985) (holding the default order proper where a timely answer was not filed; Respondent Carl D. Cuttone properly served where complaint sent by certified mail to his last business address was signed for by Joseph A. Cuttone), *aff'd per curiam*, 804 F.2d 153 (D.C. Cir. 1986) (unpublished); *In re Corbett Farms, Inc.*, 43 Agric. Dec. 1775 (1984) (holding the default order proper where a timely answer was not filed); *In re Ronald Jacobson*, 43 Agric. Dec. 780 (1984) (holding the default order proper where a timely answer was not filed); *In re Joseph Buzun*, 43 Agric. Dec. 751 (1984) (holding the default order proper where a timely answer was not filed; Respondent Joseph Buzun properly served where complaint sent by certified mail to his residence was signed for by someone named Buzun); *In re Ray H. Mayer* (Decision as to Jim Doss), 43 Agric. Dec. 439 (1984) (holding the default order proper where a timely answer was not filed; irrelevant whether respondent was unable to afford an attorney), *appeal dismissed*, No. 84-4316 (5th Cir. July 25, 1984); *In re William Lambert*, 43 Agric. Dec. 46 (1984) (holding the default order proper where a timely answer was not filed); *In re Randy & Mary Berhow*, 42 Agric. Dec. 764 (1983) (holding the default order proper where a timely answer was not filed); *In re Danny Rubel*, 42 Agric. Dec. 800 (1983) (holding the default order proper where respondent acted without an attorney and did not understand the consequences and scope of a suspension order); *In re Pastures, Inc.*, 39 Agric. Dec. 395, 396-97 (1980) (holding the default order proper where respondents misunderstood the nature of the order that would be issued); *In re Jerry Seal*, 39 Agric. Dec. 370, 371 (1980) (holding the default order proper where a timely answer was not filed); *In re Thomaston Beef & Veal, Inc.*, 39 Agric. Dec. 171, 172 (1980) (refusing to set aside the default order because of respondents' contentions that they misunderstood the Department's procedural requirements, when there is no basis for the misunderstanding).

respond to the allegations of the Complaint is deemed, for the purposes of this proceeding, an admission of the allegations of the Complaint.

The requirement in the Rules of Practice that a respondent deny or explain any allegation of the Complaint and set forth any defense in a timely Answer is necessary to enable this Department to handle its large workload in an expeditious and economical manner. The Department's four ALJ's frequently dispose of hundreds of cases in a year. In recent years, the Department's Judicial Officer has disposed of 40 to 60 cases per year.

The courts have recognized that administrative agencies "should be 'free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.'"<sup>12</sup> If Respondents were permitted to contest some of the allegations of fact after failing to file a timely Answer, or raise new issues, all other Respondents in all other cases would have to be afforded

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<sup>12</sup>See *Cella v. United States*, 208 F.2d 783, 789 (7th Cir. 1953), *cert. denied*, 347 U.S. 1016 (1954), *quoting from* *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 143 (1940). *Accord Silverman v. CFTA*, 549 F.2d 28, 33 (7th Cir. 1977). See also *Seacoast Anti-Pollution League v. Costle*, 597 F.2d 306, 308 (1st Cir. 1979) (stating that absent law to the contrary, agencies enjoy wide latitude in fashioning procedural rules); *Nader v. FCC*, 520 F.2d 182, 195 (D.C. Cir. 1975) (stating that the Supreme Court has stressed that regulatory agencies should be free to fashion their own rules of procedure and to pursue methods for inquiry capable of permitting them to discharge their multitudinous duties; similarly this court has upheld in the strongest terms the discretion of regulatory agencies to control disposition of their caseload); *Swift & Co. v. United States*, 308 F.2d 849, 851-52 (7th Cir. 1962) (stating that administrative convenience or even necessity cannot override constitutional requirements, however, in administrative hearings, the hearing examiner has wide latitude as to all phases of the conduct of the hearing, including the manner in which the hearing will proceed).

the same privilege. Permitting such practice would greatly delay the administrative process and would require additional personnel.

The record clearly establishes that Respondents were provided with a meaningful opportunity for a hearing in accordance with the Rules of Practice. Respondents waived their right to a hearing by failing to file a timely Answer (7 C.F.R. §§ 1.139, .141(a)). Moreover, Respondents' failure to file a timely Answer is deemed, for the purposes of this proceeding, to be an admission of the allegations in the Complaint (7 C.F.R. § 1.136(c)).

Accordingly, the Default Decision as to Charles Contris was properly issued in this proceeding. Application of the default provisions of the Rules of Practice does not deprive Respondents of their rights under the due process clause of the Fifth Amendment to the United States Constitution.<sup>13</sup> There is no basis for allowing Respondents to present matters by way of defense at this time.

For the foregoing reasons, the following Order should be issued.

### **Order**

#### **Paragraph I**

Respondent Charles Contris, his agents and employees, directly or indirectly through any corporate or other device, shall cease and desist from:

1. Failing to pay, when due, the full purchase price of livestock;
2. Failing to pay the full purchase price of livestock;

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<sup>13</sup>See *United States v. Hulings*, 484 F. Supp. 562, 568-69 (D. Kan. 1980).

3. Purchasing livestock while insolvent, that is, while current liabilities exceed current assets, unless Respondent Charles Contris pays the full purchase price of the livestock at the time of the purchase of the livestock in United States currency, by certified check, or by wire transfer, as provided in 7 U.S.C. § 204;

4. Initiating or participating in any activity, course of conduct, scheme, arrangement, or agreement to purchase or attempt to purchase livestock, either directly or indirectly through his agents, intermediaries, persons or entities, which would endanger or attempt to endanger, the trust interest accorded to each seller of livestock by virtue of 7 U.S.C. § 196: *Provided, however,* That Respondent Charles Contris, his agents or intermediaries who purchase for Respondent Charles Contris, may purchase or attempt to purchase livestock on credit if Respondent Charles Contris, his agents or intermediaries who purchase for Respondent Charles Contris, fully inform such livestock sellers, in writing, before such purchase that the method and manner of payment for the purchase would constitute a credit sale as recognized by 7 U.S.C. § 228b and 9 C.F.R. § 201.43; and

5. Violating the Secretary's Order in P. & S. Docket No. D-91-75.

The cease and desist provisions of this Order shall become effective on the day after service of this Order on Respondent Charles Contris.

### **Paragraph II**

Respondent Charles Contris is assessed a civil penalty of \$28,000 (for which Respondent Charles Contris is jointly and severally liable with Respondent Spring Valley Meats, Inc.) which shall be paid by certified check or money order, made payable to the

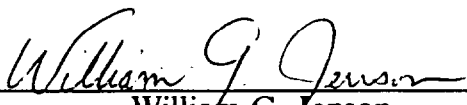
Treasurer of the United States, and forwarded within 120 days after service of this Order on Respondent Charles Contris to:

Assistant General Counsel  
United States Department of Agriculture  
Office of the General Counsel  
Trade Practices Division  
Room 2446 South Building  
1400 Independence Avenue, SW  
Washington, DC 20250-1413

The certified check or money order should indicate that payment is in reference to P. & S. Docket No. 96-0059.

Done at Washington, D.C.

August 1, 1997

  
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William G. Jenson  
Judicial Officer